

STATEMENT OF SCOPE

Department of Transportation

Rule No.: Chapter Trans 3, 4, 6, 8

Relating to: Administration of Grant Programs to Administer Federal and State Funds for Local Public Transit Services.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The Wisconsin Department of Transportation (WisDOT) proposes to amend chs. Trans 3, 4, 6 and 8, Wis. Admin. Code, to clarify existing rules by removing or replacing obsolete language, correcting errors, and providing greater specificity in areas of the rule text that are unclear. The proposed rule modifications will not substantially change the way that WisDOT manages the distribution of federal and state funds for local public transit services, or the way that it manages subrecipients.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The following is a summary of the proposed changes to the existing rules:

Trans 3: *“Urban Mass Transit Operating Assistance Program; Procedures for Counting Passenger Trips”*

The purpose of this chapter is to establish procedures for counting passenger trips taken on participating urban mass transit systems in connection with the administration of the state financial urban mass transit assistance program under s. 85.20, Wis. Stats.

The rule changes under consideration include:

- Correcting an error in the definition of “free fare passenger trip” provided in s. Trans 3.02(2)
- Clarifying the definitions of “passenger trip” and “revenue passenger trip” provided in s. Trans 3.02(4) and (7), respectively
- Correcting an error in the procedures established for counting revenue passengers using passes or other prepaid fare methods

Trans 4: *“Urban Mass Transit Operating Assistance Program”*

The purposes of this chapter are to establish WisDOT’s administrative interpretation of s. 85.20, Wis. Stats., and to prescribe administrative policies and procedures for implementing the urban mass transit operating assistance program.

In addition to outlining the private provider procurement requirements, the rule defines eligible costs under both the urban and rural public transit aid programs provided in 49 USC § 5307 (section 5307) and 49 USC § 5311 (section 5311), respectively. Further, the rule specifies a due date of November 15th for state aid applications and provides for extensions of up to 45 days. It also specifies the deadline for new systems to notify the department of their intention to apply for state aid. The rule also specifies the performance metrics and cost efficiency standards required under s. 85.20, Wis. Stats.

The rule changes under consideration include:

- Correcting the definition of “private provider” provided in s. Trans 4.02 (4)
- Expanding s. Trans 4.03 (“Appropriateness of urban areas”) to include towns as potentially appropriate hosts for urban mass transit systems
- Replacing provisions specified in s. Trans 4.04 regarding the “request for qualifications” (RFQ) and “request for proposal” (RFP) to accurately reflect department practices and procurement requirements
- Moving back the annual application deadline for state aids, provided under s. Trans 4.07, and eliminating the provision regarding extension requests
- Eliminating the requirement, provided under s. Trans 4.07, that applicants for aid supporting new transit service notify WisDOT by April 15 of an even-numbered year, in order to be eligible for funding in the next biennium
- Removing obsolete and excessively prescriptive language from the planning requirements provided under s. Trans 4.09.

Trans 6: *“Rural and Small Urban Area Public Transportation Assistance Program”*

The purpose of this chapter is to prescribe WisDOT’s administrative interpretation of ss. 85.20 and 85.23, Wis. Stats., and to prescribe the administrative policies and procedures for implementing the federal program for public transportation projects in areas other than urbanized.

The rule specifically addresses WisDOT’s administration of 49 USC § 5311 and s. 85.20, Wis. Stats., regarding rural public transit aid programs, including the Rural Transit Assistance Program (RTAP). The rule restates the legal limit on use of federal funds for operating costs (50% of operating deficit), and caps combined

federal and state allocations for operating assistance at 70% of projected operating expenses. Similarly, the rule restates the federal law provisions allowing use of funds for administrative and technical support purposes. Further, the rule establishes a deadline for federal aid applications of October 15, with no extension provision. It also specifies that unused operating funds be made available for capital projects, in addition to specifying capital project funding priorities. Lastly, the rule establishes useful life standards for federal section 5311 funding that are inconsistent with those used in other transit programs that the department administers.

The rule changes under consideration include:

- Replacing instances of the term “operating project cost” with “net operating deficit” for accuracy
- Updating references to relevant federal funding programs
- Moving definitions contained in s. Trans 6.03 (“Federal share of project costs”) to s. Trans 6.02 (“Definitions”)
- Replacing outdated language currently in the rule relating to requests for qualifications and under s. Trans 6.03
- Updating s. Trans 6.03 to include eligible section 5311 expenses for projects that formerly qualified for funding under the Job Access and Reverse Commute program (JARC) (49 USC § 5316), which no longer exists
 - The only alternative to resolving this inconsistency with current federal law would be to prohibit the use of federal public funds for JARC-type projects. These projects have proven very valuable to numerous Wisconsin workers who, in their absence, would be unable (financially or logistically) to find or commute to a job.
- Updating s. Trans 6.06 (“Capital grants”) to reflect current department policies
- Revising the application deadline specified in s. Trans 6.07 (“Application for federal aids”), in order to be consistent with the application deadline established in s. Trans 4.07
- Revising s. Trans 6.10 (“Property management and disposition”) to align useful life standards with those established by guidance from the Federal Transit Administration (FTA) and used in other WisDOT-administered transit grant programs

- Revising s. Trans 6.11 (“Transferring federal funds to another program”) to allow WisDOT to transfer funds from the section 5311 program to the section 5307 program and vice versa, as allowed by federal law.

Trans 8: *“Allocation of Federal Public Transit Assistance Program Funds to Urbanized Areas under 200,000 Population”*

The purpose of this chapter is to prescribe the policies and procedures which WisDOT, acting on behalf of the governor, will use for the distribution of federal funds apportioned to the state of Wisconsin for mass transit assistance to urbanized areas of under 200,000 population. This program is authorized by 49 USC § 5307.

The rule specifies that funds are allocated to operating costs first, up to 50% of operating deficit, and caps combined federal and state allocations for operating assistance at 70% of projected operating expenses. The rule also specifies capital project funding priorities.

The proposed changes to this rule simply involve updating or removing outdated definitions and references to a federal transportation authorization bill that is currently obsolete.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The statutory authority for chs. Trans 3, 4, 6 and 8, Wis. Admin. Code, is provided in s. 85.20, Wis. Stats. In particular, these rules codify portions of ss. 85.20(3) and 85.20(7), Wis. Stats.

85.20 Urban mass transit operating assistance program.

(3) ADMINISTRATION. The department shall administer the urban mass transit operating assistance program and shall have all the powers necessary and convenient to implement this section, including the following powers:

(a) To receive applications for aid under this section and to prescribe the form, nature and extent of information which shall be contained in applications.

(b) To make and execute contracts with any eligible applicant to ensure the continuance and improvement of quality urban mass transit service at reasonable fares. No such contract may be effective for a period of more than one year in length and no such contract may be enforced against the state unless the following conditions are met:

1. The eligible applicant pays the operating deficit of the urban mass transit systems involved in accordance with a schedule approved by the department;

2. The participating urban mass transit system provides reduced fare programs for elderly and disabled persons during nonpeak hours. Such reduced fares may not exceed one-half of the full adult cash fare applicable during peak hours of operation; and

3. The eligible applicant establishes and maintains accounting procedures and documentation requirements as prescribed or approved by the department.

4. The eligible applicant complies with any applicable provisions of ss. 59.58 (2) (j) 2., (k) 2. and (L) and (3) (h) 2. and (j) and 66.1021 (10) (b), (11) (b) and (12) with respect to limitation on service.

(c) Except as provided in par. (cm), to audit the operating revenues and expenses of all urban mass transit systems participating in the program in accordance with generally accepted accounting principles and practices. Except as provided in par. (cm), the audits shall be the basis for computing the maximum share of state and federal aids each eligible applicant can apply against operating deficits for each state aid contract period.

(cm) To conduct an audit of a privately owned urban mass transit system with which a local public body contracts for services on the basis of competitive bids to determine that system's compliance with the terms of that contract for services. An audit under this paragraph shall be the basis for computing the maximum share of state and federal aids that an eligible applicant that contracts with a privately owned urban mass transit system on the basis of competitive bids may apply against operating deficits for each state aid contract period.

(cr) To conduct a management performance audit of all urban mass transit systems participating in the program at least once every 5 years.

(d) To apply for and receive federal grants for the department or as requested on behalf of eligible recipients.

85.20 Urban mass transit operating assistance program.

(7) COST-EFFICIENCY STANDARDS.

(a) The department shall establish cost-efficiency standards for the urban mass transit system specified in sub. (4m) (a) 6. to 8. The contracts executed between the department and eligible applicants under this section for any period beginning on or after January 1, 1997, shall provide that the department may do any of the following if costs are incurred by the eligible applicant's urban mass transit system which are inconsistent with the standards established under this subsection:

1. Exclude those costs from operating expenses for purposes of sub. (4m).

2. Reduce the amount of state aid allocation under sub. (4m) (a).

(b) The department shall specify by rule the cost-efficiency standards under this subsection, including rules for the implementation of par. (a) 1. and 2.

(c) Beginning with contracts for aid payable for calendar year 2000, the department may not enter into a contract for payment of state aids under sub. (4m) unless the rules promulgated under this subsection are in effect and unless the contract requires the urban mass transit system to comply with those rules as a condition of receiving aid under sub. (4m).

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that it will take approximately 80 hours to develop this rule. This includes the amount of time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. The department will use existing staff to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

Wisconsin currently has 74 public transit systems that receive some combination of federal aid (section 5307 and 5311) and state aid (s. 85.20, Wis. Stats.) for public transit services. The proposed rule modifications will impact the following entities: the existing (74) public transit systems, the local units of government that those systems represent, the users of those systems, and the contractors that some of those systems employ.

It is the intent of WisDOT to provide continuity for these stakeholders, and do not anticipate that any of the proposed rule changes will have a detrimental impact on any of the stakeholders. Rather, the proposed changes to these rules will provide clarity to existing WisDOT policies and procedures. The department will work with stakeholders, most notably the Wisconsin Urban and Rural Transit Association (WURTA), to effectively implement the respective changes to these rules, in regards to the administration of federal and state funds for local public transit services.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Chapter 53 of Title 49 USC (sections 5301 to 5340) establishes the parameters by which states must administer federal operating assistance for urban and rural mass transit systems. Chs. Trans 4, 6 and 8 generally are consistent with sections 5307 and 5311 of 49 USC. Chapter Trans 4 does include, however, a different definition of “urban area” than what is provided under federal law. Consistent with s. 85.20, Wis. Stats., the rule defines an urban area as either: 1) any area including a city or village with population of at least 2,500, or 2) an area containing two American Indian reservations that is served by a transit commission-operated mass transit system. Federal law defines the term as an area that includes a municipality, or other built-up place, that the U.S. DOT Secretary determines to be appropriate for a local public transportation system. The definition provided in ch. Trans 4 establishes the eligibility for a urban mass transit system receiving state aid.

There are currently no federal regulations that address the provisions contained in ch. Trans 3, which relates to the procedures for counting passenger trips taken on participating urban mass transit systems.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The department does not anticipate that any of the proposed rule changes will have a detrimental impact on participants in WisDOT's public transit aid programs. The proposed rule modifications will not substantially change the way that WisDOT manages the distribution of federal and state funds for local public transit services, or the way that it manages subrecipients.

9. Contact Person:

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